



April 18, 2005

Lord Falconer of Thoroton, P.C., Q.C.
Secretary of State for Constitutional Affairs and Lord Chancellor
Selborne House
54 Victoria Street
London SW1E 6QW
United Kingdom

Dear Lord Falconer:

Re: Review of the Regulatory Framework for Legal Services in England and Wales

I am writing as President of the Canadian Bar Association (CBA), to offer a Canadian perspective on Sir David Clementi's recent *Review of the Regulatory Framework for Legal Services in England and Wales*.

The CBA is a professional, voluntary organization, formed in 1896, and incorporated by an Act of Parliament in 1921. The CBA represents lawyers, judges, notaries, law teachers and law students from all Canada's provinces and territories. Approximately two-thirds of all practising lawyers in Canada are members of the CBA.

In the Canadian context, the CBA is distinguished from provincial and territorial law societies. Each law society is responsible for the regulation of the legal profession in its respective jurisdiction. The law societies conduct their regulatory and governance responsibilities with an over-arching mandate of public protection. The CBA brings the perspective of lawyers to both professional and public interest issues.

In December 2004, we wrote to Sir David :

- i. to emphasize the paramount importance of the preservation of the independence of the legal profession in democratic societies; and
- ii. to share our experiences in Canada with respect to alternate business structures, such as multi-disciplinary practices.

A copy of our letter to Sir David is attached for your ease of reference.

The CBA has followed the debate on the reform of legal services in England and Wales with a great deal of interest. Canada's legal culture has strong historical ties with and is influenced by that of the United Kingdom. The United Kingdom is also a principal player



in the international legal community. Any reforms in England and Wales will extend beyond your borders and influence the governance models of law societies around the world.

Many of the unique characteristics of the profession – the doctrine of privilege most notably – flow from the lawyer’s fundamental role as the intermediary between the citizen and the law. These characteristics are not simply rules laid down by a professional body. Rather, they have evolved in light of the lawyer’s unique function in relation to the citizen as interpreter of the law, legal advisor and representative in the face of the institutions of the state. The characteristics and the principles they are based on have evolved over centuries to ensure both the fairness and effectiveness of the legal system. We are heartened to note that in your statement of March 21, 2005, you indicated:

We will not jeopardise the integrity of the system – we will preserve what we do well.

Indeed, there is much that we do well as a legal profession. Sir David’s report acknowledged that the current system has produced “a strong and independently minded profession, operating in most cases to high standards, able to compete successfully internationally” and recommended that, rather than “starting from scratch”, reforms build on the current model.

The legal profession in Canada (and many other jurisdictions) is both regulated and self-governing. On the one hand, the public interest requires lawyers to be subject to standards of competence and professional conduct and demands an objective regulatory structure to ensure lawyers observe these standards. On the other hand, there is an over-arching public interest in ensuring the profession’s independence from the state.

To ensure independence from state interference, the legal profession must be self-regulating. In Canada, self-regulation is accomplished through the provincial and territorial law societies which are governed by elected “benchers”, the majority of whom are senior lawyers. As well, most of the law societies do appoint lay members to their governing bodies and also to their disciplinary panels. This lay representation adds a level of scrutiny that assists in the law societies being accountable to the public interest.

The experience in Canada has been that independent and self-regulating legal professionals best safeguard the public interest. A regulatory system that would diminish the independence of the legal profession by making it (or creating the perception that it is) subject to the control of government would seriously harm the role of lawyers in a democratic society. Lawyers owe a duty of undivided loyalty to their clients and do not serve as instruments of the state’s control or supervision of its citizens. Furthermore, lawyers are not merely professional service providers, but also hold a public office as Officers of the Court.



Lawyers, through the law societies, must be able to determine the standards of admission into the profession, establish standards and rules which govern members of the profession, and discipline those who fail to meet these standards. Independence requires the profession's freedom from governmental or international pressure in matters of access to the profession or of discipline.

The CBA's view is that law societies need to be given a wide berth in regulating the profession. The CBA urges caution in any proposal for regulatory reform which impinges on the independence of the legal profession, and which may ultimately have implications for the legal profession far beyond England and Wales.

We appreciate the opportunity to provide our views and look forward to further dialogue on these issues as your government unveils its detailed measures on legal services reform.

Yours truly,

Susan T. McGrath

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- cc: Janet Paraskeva, Chief Executive, Law Society of England and Wales
- cc: Edward Nally, President, Law Society of England and Wales
- cc: Guy Mansfield Q.C., Chairman, Bar Council, United Kingdom
- cc: David Hobart, Chief Executive, Bar Council, United Kingdom



December 6, 2004

Mrs. Susan Samuel
Review of the Regulatory Framework for Legal Services
2nd floor
Selborne House
54-60 Victoria Street
London SW1E 6QW
United Kingdom

Dear Mrs. Samuel:

Re: Review of the Regulatory Framework for Legal Services in England and Wales

I am writing as President of the Canadian Bar Association (CBA), to offer a Canadian perspective on the issues raised by Sir David Clementi in his *Review of the Regulatory Framework for Legal Services in England and Wales*. Our purpose in commenting at this time is two-fold:

- to emphasise the paramount importance of the preservation of the independence of the legal profession in democratic societies; and
- to share our experiences in Canada with respect to alternate business structures, such as multi-disciplinary practices.

I. The Profession in Canada — CBA and Law Societies

The CBA is a professional, voluntary organization, formed in 1896, and incorporated by an Act of Parliament in 1921. The CBA represents over 40,000 lawyers, judges, notaries, law teachers and law students from all Canada's provinces and territories. Approximately two-thirds of all practising lawyers in Canada are members of the CBA.

The CBA is the voice of the Canadian legal profession. The objectives of the CBA include improvement of the law and the administration of justice, promotion of fair justice systems and effective law reform, and protection and promotion of the rule of law and the independence of the legal profession.

In the Canadian context, the CBA is distinguished from provincial and territorial law societies. Each law society is responsible for the regulation of the legal profession in its respective

jurisdiction. The law societies conduct their regulatory and governance responsibilities with an overarching mandate of public protection. The CBA brings the perspective of lawyers to both professional and public interest issues.

II. Independence of the Legal Profession

(i) Independence and Self-regulation

The CBA's goals and objectives, as set out in its mission statement, include improvement of the administration of justice by preserving the independence of the legal profession and judiciary. In our view, any reform of the regulatory framework for legal services in a democratic society must preserve the independence of the legal profession, including the right to self-regulation. LeBel J. articulated this right in a recent Supreme Court of Canada decision:¹

An independent bar composed of lawyers who are free of influence by public authorities is an important component of the fundamental legal framework of Canadian society. In Canada, our tradition of allowing the legal profession to regulate itself can largely be attributed to a concern for protecting that independence and to lawyers' own staunch defence of their autonomy.²

In *A.G. Canada v Law Society of British Columbia*,³ the Supreme Court of Canada also strongly affirmed the importance of an independent bar:

The independence of the bar from the State in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members legal advice and services generally.⁴

This right and power to govern itself, free from interference, is an essential part of the independence of the legal profession. The right to self-governance in the legal profession "...means something qualitatively different from what it means for members of other professions. In the legal profession the right of self-governance is at the heart of the independence of the bar."⁵

¹ *Finney v. Barreau du Québec* [2004] 2 S.C.R. 36.

² *Ibid.* at para. 1.

³ [1982] 2 S.C.R. 308, per Estey, J.

⁴ *Supra* note 3 at 335-36.

⁵ G. Mackenzie, "Lawyer Discipline and the Independence of the Bar: Can Lawyers still Govern Themselves?" (1990) 24 *Gazette* 319 at 320.

One of the most important functions of a lawyer is the role in representing clients in their various interactions with government. A lawyer's ability to serve their clients effectively must be free from the interference of the government:

The legal profession has a unique position in the community. Its distinguishing feature is that it alone among the professions is concerned with protecting the person and property of citizens from whatever quarter they may be threatened and pre-eminently against the threat of encroachment by the state. The protection of rights has been an historic function of the law, and it is the responsibility of lawyers to carry out that function. In order that they may continue to do so there can be no compromise in the principle of freedom of the profession from interference, let alone control, by government.⁶

The existence of a strong and independent bar is essential to the proper administration of justice and to the effective practice of law. It depends upon lawyers maintaining the highest possible standards of integrity, competence and loyalty. These standards are reflected in the model *Code of Professional Conduct* enacted by the CBA. Chapter IV of the CBA Code provides:

The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and should not divulge such information unless disclosure is expressly or impliedly authorized by the client, required by law or otherwise permitted or required by this Code.

Similar standards are reflected in the Canadian provincial and territorial law society codes, and are rigorously enforced by the respective law societies. LeBel J., recognized that the independence of the bar created reciprocal responsibilities for the profession:

In return, the delegation of powers by the State imposes obligations on the governing bodies of the profession, which are then responsible for ensuring the competence and honesty of their members in their dealings with the public.⁷

The Supreme Court of Canada also recognized that breaches of this supervisory duty by the law societies in Canada "are indeed rare."⁸ As well, most of the law societies do appoint lay-members to their governing bodies and also to their disciplinary panels. This lay representation adds a level of scrutiny that assists in the law societies being accountable to the public interest.

As part of its role of protecting the independence of the profession, the CBA has consistently expressed its concerns to government about the effects of proposed legislation upon the solicitor/client relationship. Of particular concern to the CBA are mandatory reporting provisions that require legal counsel to report confidential client information, in conflict with legal, professional and ethical obligations. The CBA has challenged the applicability of such

⁶ G.D. Finlayson, Q.C., "Self-Government and the Legal Profession-Can it Continue?" (1985) 4 Advocate's Society Journal 11.

⁷ *Supra* note 1 at para. 1.

⁸ *Ibid.* The court acknowledging that a breach had arisen in the context of that particular case.

legislation to lawyers. In several cases, the Supreme Court of Canada has granted intervener status to the CBA on the issue of solicitor/client privilege.⁹

One of the benefits of having a strong and independent legal profession is its ability to also take stands on matters of public interest. The CBA undertakes interventions in cases where it can make a significant contribution to the consideration of matters of compelling public interest. Some of our more notable interventions in the public interest include: tax treatment of childcare expenses; access to legal aid; voting rights and refugee deportation¹⁰. Many of these matters involve interactions between various levels of government and individual(s). In these circumstances, the independent role of the individual lawyer or the CBA would be greatly diminished if it were perceived as being subject to interference or control from government.

The CBA considers that having an independent bar is a prerequisite to an independent judiciary and the weakening of one necessarily undermines the other. The CBA has an historic commitment to preserve the independence of the judiciary. The CBA has consistently spoken out in defense of judicial independence in the face of unfair public criticism, and on government initiatives on judicial salaries.¹¹ In the CBA's submission to a Canadian Parliamentary committee reviewing the *Supreme Court of Canada Appointment Process*, we said independence of the judiciary from the executive and legislative branches is a cornerstone of our system of government and, by extension, of Canadian democracy itself.¹² We expressed our opposition to any measure that would give to Canadians the mistaken impression that the judicial branch answers to the legislative or executive branch. The CBA submits the same argument applies in ensuring that the legal profession is truly independent.

(ii) Implications of an Independent Bar

The experience in Canada has been that independent and self-regulating legal professionals best safeguard the public interest. A regulatory system that would diminish the independence of the legal profession by making it (or creating the perception that it is) subject to the control of government would seriously harm the role of lawyers in a democratic society. In the words of Finlayson:

⁹ *Michaud v. Quebec (Attorney General)*, [1996] 3 S.C.R. 3 (wiretapping lawyers' conversations); *R. v. Fink*, [2002] 3 S.C.R. 209 (law office searches); *Maranda v. Richer*, [2003] 3 S.C.R. 193 (scope of information protected by solicitor-client privilege); *City of Montreal v. La Société d'énergie Foster Wheeler Ltée* (2004 SCJ 18) (nature of advice protected by solicitor-client privilege).

¹⁰ *Symes v. Canada*, [1993] 4 S.C.R. 695 (tax treatment of childcare expenses); *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46 (access to legal aid); *Law Society of British Columbia v. Mangat*, [2001] 3 S.C.R. 113 (immigration consultants); *Suresh v. Minister of Citizenship and Immigration*, [2002] 1 S.C.R. 3 (refugee deportation); *Sauvé v. Canada* (Chief Electoral Officer), [2002] 3 S.C.R. 519 (prisoners' voting rights).

¹¹ In 1996, the CBA intervened in the Supreme Court of Canada in *Reference Re Remuneration of Judges of the Provincial Court of Prince Edward Island* (PEI Reference) [1997] 3 S.C.R. 3. Recently, the CBA appeared in the Supreme Court of Canada as intervener, where we were principally concerned to see that judicial financial security was protected as part of the conditions of judicial independence. See *Ontario Judges Association v Her Majesty The Queen in Right of the Province of Ontario*: Court File Number 30148. The Supreme Court of Canada has not handed down a decision on this matter heard on November 9 and 10, 2004.

¹² In a March 2004 submission to the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness: http://www.cba.org/CBA/submissions/main/04_10_03.asp.

Lawyers could not advise citizens as to their responsibilities with respect to particular legislation or governmental action if they cannot maintain their independence as individuals. It is almost impossible to do this if the Society that governs them is under the day-to-day control of government. It is imperative that the public have a perception of the legal profession as entirely separate from and independent of government, otherwise it will not have confidence that lawyers can truly represent its members in their dealings with government.¹³

The CBA urges caution in any proposal for regulatory reform which impinges on the independence of the legal profession, and which may ultimately have implications for the legal profession far beyond England and Wales.

III. CBA's Position on Multi-Disciplinary Practices

In Canada, lawyers admitted to the profession are entitled to undertake both solicitor and barrister work. The exception is in the province of Quebec, where the legal profession is comprised of lawyers and notaries governed respectively by the Barreau du Québec and the Chambre des notaires. For most Canadian lawyers, therefore, the proposals on Legal Disciplinary Practices (LDPs), which would bring lawyers from different disciplines together, is not in issue. The CBA's comments are, therefore, confined to the proposals for the development of alternative business structures. We will comment on the further dimension of the LDPs, that of ownership of the business separate from those who run it, in the context of CBA's position on multi-disciplinary practices (MDPs).

In 1997, the CBA established a committee whose mandate included recommending a policy framework on multi-disciplinary practices (MDPs) that offer legal services to the public. The CBA defined MDPs as:

business arrangements in which lawyers and non-lawyers practice together to provide a broad range of advice, including legal advice, to consumers, and which encompass a variety of forms, from highly integrated organizations with lawyers and non-lawyers working under one ownership structure to loose referral networks.¹⁴

In August 2000 and February 2001, the CBA Council, our highest decision making body, adopted resolutions endorsing MDPs. These resolutions were adopted after extensive study and consultation within the CBA membership and the profession generally. The debate focused on the initial question, whether MDPs should be allowed at all, and on two issues which were the subject of amendments:

- whether MDPs should be regulated as an entity and thus required to obtain a license as a precondition of delivering legal services; and
- whether MDPs should be controlled by lawyers.

¹³ *Supra* note 6.

¹⁴ CBA Resolution 00-03-A.

The proponents of licensing believed that it was necessary to ensure an MDP's compliance with the core values of the legal profession, including confidentiality and the avoidance of conflicts of interest. Large MDPs would be centrally managed, as opposed to being managed by individual lawyers. The systems developed by MDPs to preserve the core values should therefore be subject to the authority of the law society. Further, individual lawyers in large MDPs might lack the influence to ensure that those MDPs adhere to the core values. To ensure an effective remedy for breaches of the core values, law societies needed adequate control over the entire organization.

The opponents of licensing of MDPs believe that it is more effective for law societies to regulate individual lawyers, as opposed to the MDP entity. Law societies have always regulated individual lawyers, as opposed to the organizations in which they practice. In-house counsel already respect the core values without law societies controlling the companies for which they work. When there are problems, law societies will have an easier time regulating individual lawyers than they would regulating large MDPs. Allowing regulation at the MDP level might mean that these organizations' non-lawyer members would demand a say in the operation of law societies, or in the MDPs delivery of legal services.

The resolution adopted by the CBA calls for the delivery of legal services by MDPs to be effectively controlled by lawyers.¹⁵ A lawyer or lawyers should only be permitted to practice in an MDP if the lawyer or lawyers have effective control over the practice and business of the MDP. Effective control means that the lawyer or lawyers in an MDP can, by way of a partnership agreement or other contractual arrangement governing the relationship of the lawyer(s) and the non-lawyer(s) within the MDP, ensure continuing compliance with the core values, ethical and statutory obligations, standards and rules of professional conduct of the legal profession.

On the control issue, CBA Council debated at length the issue of lawyer control over the entire MDP organization. There was strong concern that the core values of the profession would not be protected without lawyer control over the entire MDP. CBA Council resolved that the protection of the core values of the profession was paramount.¹⁶ These core values of the legal profession include:

- respect for the confidentiality of client information;
- protection of solicitor-client privilege;
- avoidance of conflicts of interest;
- independence of the legal profession;
- avoidance of the unauthorized practice of law; and
- the duty of loyalty to the client.

The CBA resolution also calls on Canadian law societies to develop rules that ensure the necessary structures and precautions are in place within each form of MDP to ensure continuing compliance with the core values, ethical and statutory obligations, standards and rules of professional conduct of the legal profession. Such rules would ensure that lawyers do not practice in MDPs with other service providers having conflicting ethical responsibilities. For example, when a lawyer or lawyers and an accountant or accountants practice together in an

¹⁵ CBA Resolution 01-01-M.

¹⁶ *Ibid.*

MDP, the contractual agreement governing the relationship shall provide that the accountant(s) shall not provide audit services to any client of the MDP given the clear conflict between the auditor's disclosure obligations and the lawyer's duty to protect client confidentiality and to maintain solicitor-client privilege.

The CBA resolution also seeks to preserve solicitor client confidentiality by requiring lawyers practicing in MDPs to ensure that the necessary systems are in place to maintain the secrecy and confidentiality of a client's affairs and documents when others in the firm may be subject to statutory or regulatory disclosure obligations.

We attach copies of the relevant CBA resolutions on MDPs for your information and reference.

Thank you for the opportunity to provide our comments. We trust that the Canadian perspective will offer some guidance in your deliberations and we hope to comment further upon review of your final report.

Yours truly,

A handwritten signature in black ink, appearing to read "Susan T. McGrath". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Susan T. McGrath

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1. CBA Resolution 01-01-M
2. CBA Resolution 00-03-A

Multi-Disciplinary Practices (MDPs)

Cabinets multidisciplinaires (CMD)

WHEREAS CBA Council adopted resolution 00-03-A concerning MDPs at the 2000 Annual Meeting in Halifax;

WHEREAS there continues to be concern about the element of control by lawyers in MDPs in order to protect the core values of the legal profession;

WHEREAS there is also concern about the ability of sole practitioners and small firms to enter into MDPs;

BE IT RESOLVED THAT:

1. Paragraph 1 of resolution 00-03-A be deleted and replaced with:

“1.a. A lawyer or lawyers should only be permitted to practice in an MDP if the lawyer or lawyers have effective control, as defined below, over the practice and business of the MDP. “Effective control” means that the lawyer or lawyers in an MDP can, by way of a partnership agreement or other contractual arrangement

ATTENDU QUE le Conseil de L’ABC a adopté la résolution 00-03-A concernant les CMD lors de l’Assemblée annuelle 2000 à Halifax;

ATTENDU QUE la question du contrôle que les juristes devraient exercer sur les CMD pour protéger les principes fondamentaux de la profession juridique demeure problématique;

ATTENDU QUE le problème se pose également au sujet de la capacité des juristes autonomes et des petits cabinets juridiques à intégrer les CMD;

QU’IL SOIT RÉSOLU QUE :

1. le paragraphe 1 de la résolution 00-03-A soit abrogé et remplacé par le suivant :

«1.a. Un(e) ou des juristes ne soient autorisés à exercer dans le cadre d’un CMD que si le ou les juristes exercent un véritable contrôle, tel que défini ci-dessous, sur la pratique et les affaires du CMD. « Un contrôle véritable » signifie que le ou les juristes peuvent, au sein du CMD, par l’entremise d’un contrat de société ou toute autre entente contractuelle

governing the relationship of the lawyer(s) and the non-lawyer(s) within the MDP, ensure continuing compliance with the core values, ethical and statutory obligations, standards and rules of professional conduct of the legal profession.

- b. The core values of the legal profession include:
- respect for the confidentiality of client information;
 - protection of solicitor-client privilege;
 - avoidance of conflicts of interest;
 - independence of the legal profession;
 - avoidance of the unauthorized practice of law;
 - the duty of loyalty to the client.

- c. The partnership agreement or other contractual arrangement between the lawyer(s) and the non-lawyer(s) within the MDP must comply with the requirements of the relevant law society.”

régissant les relations entre juristes et non-juristes au sein du CMD, veiller au respect continu des principes fondamentaux, des obligations éthiques et légales et des normes et règles de conduite professionnelle applicables à la profession juridique.

- b. Les principes fondamentaux de la profession juridique comprennent :
- le respect du caractère confidentiel des renseignements fournis par la clientèle;
 - la protection du secret professionnel;
 - l'exclusion des conflits d'intérêts;
 - l'indépendance de la profession juridique;
 - l'exclusion de la pratique du droit non autorisée;
 - l'obligation de loyauté envers la clientèle.

- c. Le contrat de société ou toute autre entente contractuelle conclu entre les juristes et les non-juristes du CMD doit se conformer aux exigences et obligations prescrites par le barreau compétent. »

2. Paragraph 5 of resolution 00-03-A be deleted and replaced with:
- “5. “Law societies should develop rules for:
- a. ensuring that the necessary structures and precautions are in place within each form of MDP to ensure continuing compliance with the core values, ethical and statutory obligations, standards and rules of professional conduct of the legal profession;
 - b. ensuring that lawyers do not practice in MDPs with other service providers having conflicting ethical responsibilities. For example, when a lawyer or lawyers and an accountant or accountants practice together in an MDP, the contractual agreement governing the relationship shall provide that the accountant(s) shall not provide audit services to any client of the MDP given the clear conflict between the auditor’s disclosure obligations and the lawyer’s duty to protect client confidentiality and to maintain solicitor-client privilege;

2. Le paragraphe 5 de la résolution 00-03-A soit abrogé et remplacé par :
- «5. « Les barreaux élaborent des règles afin de :
- a. Veiller à ce que chaque type de CMD adopte les structures et les mesures de précaution nécessaires au respect continu des principes fondamentaux, des impératifs déontologiques et légaux, et des normes et règles de conduite professionnelle propres à la profession juridique;
 - b. Éviter que les juristes exercent dans un CMD avec d’autres pourvoyeurs de services dont les responsabilités entreraient en conflit avec les leurs. Par exemple, lorsqu’un ou des juristes et un ou des comptables exercent ensemble dans le cadre d’un CMD, l’entente contractuelle gouvernant leurs rapports devra stipuler que le(les) comptable(s) ne devra(devront) pas fournir de services de vérification à un(e) client(e) du CMD en raison du conflit évident existant entre les obligations de divulgation auxquelles est tenu le vérificateur et l’obligation qu’a l’avocat(e) de protéger le caractère confidentiel des relations avec la clientèle et de préserver le secret professionnel;

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| <p>c. providing that every client of the MDP shall also be considered the client of each lawyer within the MDP; and</p> <p>d. requiring lawyers practising in MDPs to ensure that the necessary systems are in place to maintain the secrecy and confidentiality of a client's affairs and documents when others in the firm may be subject to statutory or regulatory disclosure obligations.”</p> | <p>c. Prescrire que chaque client(e) du CMD sera considéré(e) comme le(la) client(e) de chaque juriste qui y exerce; et</p> <p>d. Exiger des juristes exerçant au sein d'un CMD qu'ils(elles) vérifient que tous les mécanismes nécessaires sont en place pour préserver le secret professionnel et la confidentialité des affaires et des documents de la clientèle lorsque d'autres professionnel(le)s au sein du CMD sont tenus, par la loi ou par le règlement, à divulguer ce type de renseignements. »</p> |
| <p>3. Paragraph 8 and 9 of resolution 00-03-A be deleted.</p> | <p>3. Les paragraphes 8 et 9 de la résolution 00-03-A soient abrogés.</p> |

**Certified true copy of a resolution carried as amended
by the Council of the Canadian Bar Association at the
Mid-Winter Meeting held in Mont Ste -Anne, QC
February 16-18, 2001.**

**Copie certifiée conforme d'une résolution adoptée,
tel que modifiée, par le Conseil de l'Association du
Barreau canadien, lors de l'Assemblée de la mi-hiver
2001, à Mont Ste-Anne QC du 16 au 18 février 2001.**

**John D.V. Hoyles
Executive Director/Directeur exécutif**

Multi-Disciplinary Practices (MDPs)

WHEREAS in 1997 the Canadian Bar Association established the International Practice of Law Committee, whose mandate includes recommending a policy framework to the CBA concerning multi-disciplinary practices (MDPs) which offer legal services;

WHEREAS MDPs are business arrangements in which lawyers¹ and non-lawyers practice together to provide a broad range of advice, including legal advice, to consumers, and which encompass a variety of forms, from highly integrated organizations with lawyers and non-lawyers working under one ownership structure to loose referral networks;

WHEREAS the Committee issued its report in August 1999, entitled *Striking a Balance*;

BE IT RESOLVED THAT:

1. Lawyers should be permitted to practice in MDPs provided that the MDP's delivery of legal services is controlled by lawyers.

Cabinets multidisciplinaires (CMD)

ATTENDU QU'en 1997 L'Association du Barreau canadien a formé le Comité sur la pratique internationale du droit, dont le mandat consiste notamment à recommander une politique-cadre pour L'ABC au sujet des cabinets multidisciplinaires (CMD) offrant des services juridiques;

ATTENDU QUE les CMD sont définis comme des « ententes commerciales » par lesquelles des juristes* et des non-juristes unissent leurs pratiques pour offrir un vaste éventail de conseils, y compris des conseils juridiques, aux consommateurs et consommatrices et qui prennent des formes variées, allant d'organisations hautement intégrées regroupant des juristes et des non-juristes sous une structure unique de propriété à des réseaux de consultation plus souples;

ATTENDU QUE le Comité a publié son rapport intitulé *Vers un juste milieu* en août 1999;

QU'IL SOIT RÉSOLU QUE :

1. Les juristes soient autorisés à exercer dans le cadre de CMD, à la condition que les services juridiques soient contrôlés par des juristes.

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|---|--|
| <p>2. Lawyers should be permitted to share fees with non-lawyers in MDPs.</p> | <p>2. Les juristes soient autorisés à partager leurs honoraires avec des non-juristes dans le cadre d'un CMD.</p> |
| <p>3. The relevant law society² should require MDPs to obtain a licence as a condition to offering legal services. Licences should be conditional on the MDP satisfying the law society that it has taken all reasonable steps to comply with the core values, ethical obligations, standards and rules of professional conduct of the legal profession. The law society should be empowered to suspend or withdraw an MDP's licence to offer legal services in the event of non-compliance.</p> | <p>3. Le barreau** exige des CMD qu'ils obtiennent une licence comme condition obligatoire pour pouvoir offrir des services juridiques. Le barreau accordera ladite licence s'il est convaincu que le CMD a pris toutes les mesures raisonnables pour se conformer aux principes fondamentaux, aux obligations éthiques et aux normes et règles de déontologie professionnelle applicables à la profession juridique. En cas de non observance de ces exigences, le barreau est habilité à suspendre ou à retirer à un CMD la licence l'autorisant à offrir des services juridiques.</p> |
| <p>4. MDPs should be regulated under comprehensive principles which apply to MDPs whether the MDPs are fully integrated partnerships, involve "captive" or "affiliated" law firms, operate under the same trade name as another firm or</p> <p>otherwise are held out to the public as constituting one firm or having integrated management or business relations.</p> | <p>4. Les CMD soient régis par un ensemble exhaustif de principes applicables aux CMD, que ces derniers soient des sociétés pleinement intégrées, des cabinets juridiques³ « captifs » ou « affiliés », qu'ils opèrent sous la même dénomination sociale qu'un autre cabinet ou</p> <p>soient présentés au public comme constituant un seul cabinet ou encore qu'ils disposent d'un système de gestion ou des relations commerciales de type intégré.</p> |
| <p>5. MDPs should be required to adhere to the core values, ethical obligations, standards and rules of professional</p> | <p>5. Les CMD respectent obligatoirement les principes fondamentaux, les impératifs de nature déontologique, les normes et les</p> |

- conduct of the legal profession. These include, but are not limited to, respect for the confidentiality of client information, protection of solicitor-client privilege and avoidance of conflicts of interest.
6. MDPs should be required to ensure that they comply with the core values, ethical obligations, standards and rules of professional conduct of the legal profession and remain responsible for their failure to do so. Lawyers should not practice in an MDP that fails to comply with these requirements.
7. Law societies should require that the MDP:
- (a) advises clients that the firm includes those who are not subject to the legal profession's values, obligations, standards and rules; and
 - (b) maintains insurance for each lawyer practising in the MDP that is:
 - (i) of at least the same nature, scope and quantum as that required for other practising lawyers; and
- règles de conduite professionnelle propres à la profession juridique. Ce qui comprend, mais sans y être limité, le respect du caractère confidentiel des renseignements fournis par la clientèle, la protection du secret professionnel et l'exclusion des conflits d'intérêts.
6. Les CMD veillent à ce qu'ils respectent les principes fondamentaux, les impératifs de nature déontologique, les normes et les règles de conduite professionnelle propres à la profession juridique et puissent être tenus responsables de leur négligence à s'y conformer et que les juristes refusent d'exercer dans un CMD qui ne respecte pas ces obligations.
7. Les barreaux exigent du CMD qu'il :
- (a) informe la clientèle que le cabinet comprend des personnes qui ne sont pas soumises aux principes, obligations, normes et règles de la profession juridique; et
 - (b) souscrive une assurance à l'égard de chaque juriste exerçant dans le CMD qui soit :
 - (i) de nature, d'une portée et d'un montant au moins équivalents à ce qui est exigé pour d'autres juristes en exercice; et

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| <p>(ii) of such a nature and quantum that no additional risks are added to the insurance coverage carried for lawyers by or on behalf of the law society than would be the case were the lawyers in the MDP not practising with non-lawyers.</p> | <p>(ii) d'une nature et d'un montant n'entraînant pas l'ajout de risques à la couverture d'assurance souscrite par le barreau ou en son nom à l'égard des juristes comme dans l'éventualité où le CMD ne comprendrait pas de non-juristes.</p> |
| <p>8. Law societies should develop rules for ensuring that lawyers do not practise in MDPs with other service providers having conflicting ethical responsibilities. For instance, lawyers practising in MDPs should not provide legal services to clients who retain the MDP for auditing services.</p> | <p>8. Les barreaux élaborent des règles visant à s'assurer que les juristes n'exercent pas dans des CMD qui transigent avec d'autres pourvoyeurs de services susceptibles d'entrer en conflit avec leurs responsabilités déontologiques. Par exemple, que les juristes exerçant dans le cadre d'un CMD ne fournissent pas de services juridiques aux clients ayant confié au CMD un mandat pour des services de vérification comptable.</p> |

9. The CBA and law societies should develop rules which will address:
- (a) the protection and preservation of solicitor-client privilege and confidentiality and the avoidance of conflicts of interest within MDPs, and in this latter regard those rules ought to consider every client of the MDP also to be the client of each lawyer within it; and
 - (b) the obligation of lawyers practising in MDPs to maintain the secrecy and confidentiality of a client's affairs and documents when others in the firm may be subject to statutory or regulatory disclosure obligations.

9. L'ABC et les barreaux élaborent des règles qui traiteront :
- (a) de la protection et de la préservation du secret professionnel, de la confidentialité des communications entre le juriste et la clientèle et de l'exclusion des conflits d'intérêts au sein du CMD et, à cet effet, que dans les règles on considère chaque cliente ou client du CMD comme la ou le client de chaque juriste qui y exerce; et
 - (b) de l'obligation des juristes exerçant dans un CMD de préserver le secret professionnel et la confidentialité entourant les affaires et les documents de la clientèle au cas où d'autres personnes du cabinet pourraient être tenues par la loi ou un règlement de divulguer des renseignements.

10. Only lawyers and Quebec notaries should be permitted to practice law in MDPs. Law society regulation governing the unauthorized practice of law should apply to MDPs.

10. Seuls les avocats, avocates et les notaires du Québec soient autorisés à exercer le droit dans les CMD et que les règlements du Barreau ou de la Chambre régissant la pratique non autorisée du droit s'appliquent aux CMD.

Certified true copy of a resolution carried as amended by the Council of the Canadian Bar Association at the Annual Meeting held in Halifax, NS, August 19-20, 2000.

Copie certifiée d'une résolution adoptée, tel que modifiée, par le Conseil de l'Association du Barreau canadien, lors de son Assemblée annuelle, à Halifax N-É les 19 et 20 août 2000.



John D.V. Hoyles
Executive Director/Directeur exécutif

1. "Lawyer" includes Quebec notaries throughout. Tout au long du texte, le terme « juriste » comprend les notaires du Québec.
2. "Law society" refers throughout to all provincial and territorial governing bodies of the legal profession, including the Barreau du Québec and the Chambre des notaires. « Barreau » réfère tout au long de cette résolution aux instances de réglementation de la profession juridique de tous les provinces et territoires, y compris le Barreau du Québec et la Chambre des notaires.
3. « Cabinet juridique » comprend également une étude de notaires.